

**Industrial Commission's Advisory Committee
On Workers' Compensation
Minutes
May 11, 2011**

Members Present

Mike Haxby	Glenna Christensen
Rian Van Leuven	Gardner Skinner
Roy Galbreath	James Alcorn
Linda J. Sams	John Greenfield
James Arnold	Steve Millard
Jasen Carrier	Clay Atwood
Dave Whaley	Paul Collins

Members Absent

Senator John Andreason
Representative Jeff Nasset

Industrial Commission

Chairman Thomas E. Limbaugh
Commissioner Thomas P. Baskin
Commissioner R. D. Maynard
Director Mindy Montgomery

Minutes:

The Minutes of February 8, 2011 were reviewed. Upon motion by Dave Whaley, seconded by Roy Galbreath, the Minutes were approved as written.

Subcommittee Reports:

PFFI Legislation – Roy Galbreath reported that at the last meeting the Professional Fire Fighters of Idaho requested some time to redraft their legislation to encompass the subcommittee's suggestions. The proposed legislation includes presumptions for specific diseases within the workers' compensation occupational disease laws. Mr. Galbreath stated that PFFI should have a draft ready to present to the subcommittee and Advisory Committee prior to submitting the legislation to the 2012 legislature.

Attorney Fees – James Arnold reported that the subcommittee's meeting yesterday resulted in a consensus to start drafting changes to §72-432, Idaho Code. Commissioner Baskin explained that the subcommittee's goal is to address the issue of a claimant's inability to obtain legal representation for prospective medical care since there is no fund from which attorneys can recover fees for their services if the attorney is successful. Commissioner Baskin reported that the subcommittee reached consensus to work on draft changes for small claims of less than \$2500, possibly in a summary fashion similar to the current Commission procedures for Change of Physician that result in more expeditious decisions than regular hearings. A draft should be ready for presentation at the next meeting.

Independent Contractor Laws - Christi Simon reported that the Employer Compliance Division is looking to amend the definition of an independent contractor and impose civil penalties on employers who misclassify their employees and/or force employees to obtain and/or pay for their own workers' compensation insurance. Ms. Simon stated that several contractors attended the subcommittee meeting held on the 29th of March and voiced concern over their inability to compete on a level playing field when other employers don't carry the required

workers' compensation coverage which impedes fair competition among all the construction trades.

Ms. Simon reported that the three pieces of legislation being proposed would amend §72-102, §72-318, and §72-319, Idaho Code, to clarify and hopefully reign in employers who operate outside Idaho Code. Ms. Simon stated that the proposed amendments to §72-102 add a second test to the definition of independent contractor to assist employers in appropriately classifying employees; §72-318 imposes penalties on employers who violate the existing prohibition against requiring employees to pay for or obtain their own workers' compensation insurance coverage; and §72-319 allows the Commission to impose penalties upon employers for misclassification of employees when the employer had previously been notified in writing by the Commission that the worker or workers employed by him are not independent contractors and should be protected by workers' compensation insurance.

Discussion was held on the proposed change to §72-319(b) stating that an employee could be held personally liable if they have knowledge of his employer's requirement to obtain workers' compensation coverage and the employer fails to do so. Ms. Simon and Deputy Attorney General defined what type of employee (such as a partner or manager of a company) would be considered for a penalty, which follows Idaho statutes.

Discussion was held on the penalty amount, and doubts were raised about the legislature's acceptance of the maximum penalty amount of \$10,000 per employee. Dave Whaley believes that it will be possible to gather a lot of support for this proposed legislative change including the penalty amount. Steve Millard questioned if any opposition had been received and suggested that these proposals be sent out to small business organizations for their input.

Public Comment: Brad Eidam suggested that if there is concern regarding passage of a penalty with a \$10,000 maximum, the Commission might consider a penalty assessed at triple the cost of what the premium would have been which is currently used in Idaho statute in regard to penalties assessed by other agencies.

Ms. Simon will review the suggestions given and the final draft of the proposed legislation will be presented at the next Advisory Committee meeting for consensus.

Security for Compensation – Subcommittee Chairman Rian Van Leuven reported that since the last Advisory Committee meeting, no meetings have been held but will schedule meetings for May, June, and July. Chairman Limbaugh stated that he wants as many self-insurers to attend these subcommittee meetings as possible and be given the opportunity to comment on the proposed changes. Chairman Limbaugh also stated that it was very important to invite Representative Nessel and Senator Andreason to these subcommittee meetings.

Advisory Committee Chairman Mike Haxby asked Chairman Limbaugh to report on the legislature's actions this year, and what the committee should look forward to in regards to workers' compensation. Chairman Limbaugh reported that the Security for Compensation rules were passed by the legislature and became effective upon sine die. The new rules separate the

regulations for insurance carriers and self-insured employers allowing the Commission to move forward on amending the self-insured employer requirements. Chairman Limbaugh noted that the Commission is not proposing any changes to the insurance carrier rules this year. Chairman Limbaugh stated that the Commission is learning more about actuaries and excess insurance, and there is more work to do yet. The Commissioner would like as many parties involved as possible to comment on the proposed changes. The next subcommittee meeting was scheduled for the morning of May 25, 2011.

Issues:

Proposed Release to Work Form for Providers – Linda J. Sams presented the return to work forms that providers, employers, rehabilitation consultants, and adjusters have been working on in north Idaho to help reduce the amount of paperwork for providers of workers' compensation patients and yet provide the information needed by everyone involved. Ms. Sams stated that the forms are being well accepted in her area and wanted to share the forms with the Advisory Committee for possible use state wide. Dr. Collins suggested the forms be accessible electronically. Mike Haxby commented that local providers he has spoken to don't see the form being widely used in this area especially if providers don't take workers' compensation patients very often. Some providers have similar forms they are currently using.

Public Comment: Terrisa Wyatt, Lead Regional Manager of the Commission's Rehabilitation Division, stated that rehabilitation consultants have addressed the issue regarding the type of information needed on worker's compensation claims with employers and physicians, and providers use whatever forms the provider is comfortable with. Training appointments with physicians continues to be done by several Commission staff in an effort to educate as many providers and employers as possible.

Judy Wise with Woodgrain Millwork noted that in her experience local physicians do a really good job of providing the information needed to sureties and employers.

Status of the ISIF – James Kile, Manager of the Industrial Special Indemnity Fund, reported that since the first of the year the ISIF has been on a very aggressive defense of its cases and has done fewer lump sum settlements which has reduced costs. If current costs remain stable, the ISIF assessment projection is an increase of 15% for 2012 or 4.5 million. Mr. Kile stated that the range of current claimants is widening from 39 to 85 years of age, so defense costs may go up, but since they have been successful in many of those cases, the payout to claimants is less. Mr. Kile commented that he has no desire to move forward with legislation again this year without significant changes. Mr. Kile would like to re-activate the ISIF subcommittee to review the entire subject and discuss alternatives to winding down the ISIF by drafting amendments to limit access to the second injury fund. Mr. Kile suggested meetings be held in each of the next three months.

Public Comment: Jack Barrett, Attorney with Moffatt, Thomas, et al, inquired as to the amount of the unfunded liability and if it was still increasing. Mr. Kile responded that it was still increasing and is approximately \$30 million. Mr. Barrett stated that the increases are alarming and something has to be done as the longer we wait, the more detrimental it will become. Mr. Barrett opined that the financial burden on the ISIF which increases premiums for employers will

continue to increase. Woody Richards, Attorney, stated that he has the same interest as Mr. Barrett and maybe we need to look at other ways to address the problem and look at alternatives to fix the problem. Roy Galbreath, Judy Wise, Jasen Carrier, Jack Barrett, and Alan Gardner were added members to the ISIF subcommittee.

An ISIF subcommittee meeting to discuss alternatives was scheduled for May 25, 2011 at 1:30 p.m. at the Commission office.

Improving Independent Medical Exams – Commissioner Baskin stated that the Commissioners are frequently frustrated by the divergence of opinions on complex medical issues in regard to claimant's medical conditions. The intent of the statute on independent medical evaluations was to allow both sides of the issues to have access to the medical information. Commissioner Baskin wants to affect better efficiencies for IME's rather than having multiple medical evaluations with widely differing outcomes. Commissioner Baskin noted that since the Commission can also refer a claimant for a medical evaluation, the Commissioners are contemplating forming a non-exclusive panel of a variety of physicians that can be called upon by the Commission to evaluate a claimant in the case where medical causation is at issue. The Commission would set ground rules for the types of exams to be conducted and would be totally voluntary. With the Commission paying the physician for the evaluation, the results may have more credibility than trying to determine whose evaluation is more accurate. Commissioner Baskin stated that so far the Commission is just in the early stages of possibly going forward. Rather than form another subcommittee, Mr. Arnold stated that since it was similar to what the subcommittee on Attorney Fees was working on, it would make sense to add this to his subcommittee.

Glenna Christensen commented that knowledge she has of the problems Utah had in changing the statutes in regard to IME's, she hopes that the changes can be done by rule rather than by statute changes. Dr. Collins stated that he would be willing to work preliminarily with the Commissioners on this proposal. Rian Van Leuven suggested that the Advisory Committee see what the Commissioners come up with at the August meeting, then have the subcommittee meet. Commissioner Baskin will contact those who have an interest in working on these changes.

Public Comment: Susan Veltman, an attorney with Gardner Law Offices, volunteered to serve on the subcommittee and work with Commissioners prior to the next meeting as she participated in organizing the same type of panel in Texas.

Statute of Limitations on Indemnity Benefits – Jasen Carrier reported that the City of Boise, after several in-house discussions, wants to make sure it is legal and proper to send a letter after the summary of payments has been completed to notify injured employees of the five year statute of limitations on indemnity benefits. Discussion was held and the result was that an employer should not be notifying employees of the statute of limitations due to the possibility of legal implications. Employees should be advised of their rights which they include when they may lose them, but any further questions should be referred to their attorney. Mr. Haxby suggested this be included in the Attorney Fee subcommittee to find out if there is something that

could be done to address this issue. Jasen Carrier would like to be added to the Attorney Fee subcommittee.

Deposition and Testimony Fee Guidelines in Rule – James Arnold reported that Medical Fee Schedule Analyst Patti Vaughn has been doing some work in this area and he will contact her to find out the status of adding deposition and testimony fees to the Commission's medical fee schedule.

Industrial Commission Report:

Legislative Outcome for 2011 – Commission Chairman Tom Limbaugh reported that House Bill 76 deletes the reference to a school district's work experience program being covered by the school district's workers compensation policy with the state insurance fund. School districts are permitted to self-insure if approved by the Commission, so the reference to the state insurance fund was deleted.

Chairman Limbaugh stated that House Bill 240 was the most interesting this year. The Commission proposed a decrease to the premium tax to allow employers to receive back some of the Commission's excess funds, but the House and Senate leadership wanted to take 5 million dollars for the general fund. A motion to move Commission funds was proposed by legislators and then retracted. The Commission sat with legislators and produced a plan to reduce the premium tax from 2.5% to 2% for the period of January 1, 2012 through December 31, 2013. The legislation was passed. After this period of time, the Commission can propose extending the reduction. The Commission wanted to be able to give something back to the employers and even though it isn't a lot of money, it hopefully gives employers some relief.

Senate Bill 1186 removes the reference to Idaho Code § 56-136 for the annual adjustment of medical reimbursements and states that the Commission shall adopt rules for the annual adjustment of medical reimbursement. This was done because Health & Welfare deleted the statute that the Commission used for annual updates. The Commission will submit the annual adjustment of the medical fee schedule for the legislature's approval.

Chairman Limbaugh commented that the Commission is very honored and excited to have Representative Jeff Nasset from Lewiston as the new special member of the Advisory Committee.

Topics for next Meeting:

- PFFI Legislation
- Independent Contractor Statutes
- Draft of §72-432, Idaho Code
- IME Panel
- Security for Compensation Rules
- ISIF Update
- Deposition & Testimony Fees

Next Meeting Dates: November 9, 2011
February 8, 2012
May 9, 2012
August 8, 2012
(Second Wednesday of each Quarter Month)